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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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Federal Communications Commission  
Office of the Secretary

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In the Matter of )  
)  
)

Petition for Declaratory Ruling of )  
Continental Airlines, Inc. )  
\_\_\_\_\_ )

ET Docket No. 05-247

To: The Office of Engineering and Technology

**COMMENTS OF  
NORFOLK AIRPORT AUTHORITY**

**I. INTRODUCTION**

The Norfolk Airport Authority (the "Authority") is the owner and operator of Norfolk International Airport ("Norfolk International") which is located in Norfolk, Virginia and serves the metropolitan area of Southeast Virginia and Northeast North Carolina with a population of over 1.6 million. Approximately 3.9 million passengers and more than 70 million pounds of cargo and mail are transported through Norfolk International on an annual basis. Seven airlines operate out of Norfolk International, and it is home to a large number of commercial tenants such as Anton Airfood, Inc., Hudson News, BB&T Bank, and seven rental car agencies including Avis, Budget, Dollar, Enterprise, Hertz, National, and Thrifty.

The Authority submits these Comments to the Office of Engineering and Technology ("OET") regarding a Petition for Declaratory Ruling (the "Petition") filed by Continental Airlines, Inc. ("Continental") in which Continental complained that the Massachusetts Port

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Authority ("Massport") sought to prevent Continental from operating a "Wi-Fi" antenna in Continental's frequent flyer club lounge at Logan Airport. The Authority supports the position expressed in comments filed by Massport and Airports Council International – North America ("ACI-NA").

Norfolk International has recently implemented a Wi-Fi service in order to serve the traveling public using our terminals. Any action by OET that would hinder the effective provision of that service would hinder our ability to serve the public.

An airport is a complex environment which is highly dependent on local management for centralized coordination and oversight in balancing the needs of large numbers of tenants and ensuring the safety and security of the traveling public. Airport operators like the Authority and Massport must retain control over the physical infrastructure of the airport in order to successfully manage the interests of the diverse groups served there. This applies to communications infrastructure as much as to any other type of facility.

As noted by ACI-NA and Massport, there are significant legal and practical questions concerning the application of the Over-the-Air Reception Devices ("OTARD") Rule in the airport context. Even if OET takes a different view of those questions, OET should either allow Massport to proceed under the "central antenna exception" or under a waiver.

## **II. OET SHOULD NOT RESTRICT THE AUTHORITY'S ABILITY TO PROVIDE WI-FI SERVICE.**

The Authority has offered Wi-Fi service to the public at Norfolk International since June 1, 2005, under a model that was developed after careful study and consideration of the local conditions, including the Authority's security and communication needs, the interests of its commercial tenants and the needs of the traveling public. Airport Network Solutions (ANS) was

selected by the Authority from six proposals to provide Wi-Fi service at Norfolk International following a competitive procurement process. The Wi-Fi service was installed by ANS at no cost to the Authority and is operated and managed by ANS as a concession. The service is available throughout the public areas of Norfolk International passenger terminals. ANS pays the Authority thirty percent (30%) of its gross revenue or a minimum annual guarantee of \$20,000, whichever is greater. A fee of \$6.95 per "Airport Business Day" is charged to users of the service.

Tenants at Norfolk International are allowed to install their own Wi-Fi antenna systems within their exclusively leased areas not available to the general public. The signals from tenant Wi-Fi services are not permitted to encroach into any public area of the passenger terminals.

The Authority has worked to address the needs of all the stakeholders at Norfolk International and to develop an approach that works for all parties. Other airports have introduced Wi-Fi service under many different business models, each adapted to local conditions. Any decision by OET in this case should respect the ability of airports to make different policy choices as they attempt to perform their missions.

### **III. THE OTARD RULE DOES NOT PROTECT CONTINENTAL IN THIS CASE.**

In its comments, ACI-NA raises a number of arguments, including that (i) application of the OTARD Rule in Massport's case might implicate the takings clause of the Fifth Amendment; (ii) only Continental, and not Continental's paying customers, are protected by the Rule; and (iii) the Rule does not give Continental the right to transmit a signal outside its leased space. The Authority agrees with all of these arguments, and urges OET not to apply the OTARD Rule in the airport context.

**IV. OET MUST NOT INTERFERE WITH THE ABILITY OF AIRPORTS TO PROTECT THE SAFETY AND SECURITY OF PASSENGERS.**

The Authority is very concerned that any decision by OET may restrict its ability to protect the safety and security of passengers. Massport has argued that its actions were protected under the safety exception to the OTARD Rule. Airports must have broad latitude to insure safety of its facilities and passengers. It is impractical and unrealistic to expect that OET and the FCC can address airport safety issues on a case-by-case basis in a timely and effective fashion. Consequently, airports should be given wide latitude to apply the safety exception to the OTARD Rule. Unlike residents of apartments, Continental and the other airlines, as well as other airport tenants, are sophisticated and knowledgeable businesses who need no protection from their landlords as suggested in the OTARD Rule with respect to individual homeowners or apartment residents.

Further, as ACI-NA points out, it is not enough for OET to simply say that unlicensed Wi-Fi frequencies should not be used for mission-critical applications. They are currently being used for such purposes and such use is likely to grow. Rather than fight a rear-guard action against this development, OET should encourage it, because in the end it is in the public interest.

**V. IF OET CONCLUDES THE RULE DOES APPLY, THE AUTHORITY URGES OET EITHER TO APPLY THE CENTRAL ANTENNA EXCEPTION TO THE CASE OF MASSPORT, OR TO GRANT MASSPORT A WAIVER.**

If OET concludes that the Rule does apply, notwithstanding the arguments of ACI-NA to the contrary, the Authority notes that there is ample evidence to justify either the application of the central antenna exception of the Rule, or to grant of a waiver under 47 C.F.R. 1.4000(d).

Although the central antenna exception was crafted for use in the multi-family residential video context, we believe that it can and should be adapted to airports. Airports are not condominiums or townhouse developments. They are much more complicated environments,

both in terms of their economic complexity and in terms of the many types of communications activities that take place on their premises. Chaos is not a practical solution, and a central antenna option can solve many problems for both airport managers and tenants. While some tenants may prefer to have their own antennae, in some cases, depending on local conditions, this may be unreasonable in the close quarters of an airport. Allowing individual users free rein can make it impossible for others, including the airport, to operate effectively. In that case, the airport must be allowed to manage the facility for the benefit of all.

Airports have every incentive to deliver good quality service to every person in their terminals. Consequently, Massport and other airports can be expected to ensure that the quality of signal reception over a central system will be adequate for all users. Similarly, it is unlikely that in Continental's case there would be any unreasonable increase in cost or any unreasonable delay in obtaining access to Wi-Fi service. Thus, Massport should be allowed to operate under the central antenna option.

Finally, we believe that Massport's concerns are "highly specialized and unusual," and thus warrant a waiver under 47 C.F.R. § 1.4000(d). Airports are by definition highly specialized and unusual environments, and Logan has particular concerns. If the central antenna option does not apply, the Authority urges OET to grant a waiver Massport and other airports that apply.

## CONCLUSION

The Authority supports the comments of ACI-NA and Massport, and urges OET to deny the Petition filed by Continental Airlines, Inc.

Respectfully submitted,

NORFOLK INTERNATIONAL  
AIRPORT

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September 28, 2005

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Certificate of Service

I hereby certify that I have caused to be mailed this 13th day of October, 2005, copies of the foregoing Comments of the Norfolk Airport Authority, by first-class mail, postage prepaid, to the following persons:

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